

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOHN HORTON,

Plaintiff,

v.

No. 1:22-cv-00316-JCH-SCY

NAVAJO TECHNICAL UNIVERSITY and
LUCAS B. BABYCOS,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

In March 2020, *pro se* Plaintiff entered into an employment contract with Defendant Navajo Technical University ("NTU"). *See* Complaint Plaintiff's Complaint for Breach of Contracts and Civil RICO at 3, ¶ 7, Doc. 1, filed April 26, 2022 ("Complaint"). After Defendant NTU terminated Plaintiff's employment, Plaintiff retained Defendant Babycos, an attorney, "to bring a cause of action against the defendant NTU ... for breach of contract and related issues and to pursue the matter to final judgment or settlement." Complaint at 5, ¶ 8. Plaintiff asserted a breach of contract and other claims against Defendant NTU, a civil RICO claim against Defendants NTU and Babycos, and a breach of contract claim against Defendant Babycos.

United States Magistrate Judge Yarbrough notified Plaintiff that it does not appear that the Court has jurisdiction over Plaintiff's claims against Defendant NTU, which is a tribal institution of higher education, because as sovereign powers, Indian tribes are immune from suit absent congressional abrogation or clear waiver by the tribe. *See* Doc. 6 at 3-4, filed May 12, 2022 ("Order to Show Cause"). Judge Yarbrough also notified Plaintiff the Complaint failed to state a claim for a civil remedy pursuant to the Racketeer Influenced and Corrupt Organizations statutes

and described the allegations necessary to state a civil RICO claim. *See* Order to Show Cause at 4, 6. Judge Yarbrough further notified Plaintiff that a stay of proceedings on Plaintiff's claims against Defendant Babycos may be warranted to save time and effort for the Court and the Parties and to conform to the Parties' arbitration agreement in the attorney retainer contract between Plaintiff and Defendant Babycos. *See* Order to Show Cause at 4-6. Judge Yarbrough ordered Plaintiff to: (i) show cause why the Court should not dismiss the claims against Defendant Navajo Technical University for lack of jurisdiction; (ii) show cause why the Court should not stay proceedings on Plaintiff's claims against Defendant Babycos; and (iii) file an amended complaint.

Plaintiff filed Objections to Judge Yarbrough's Order to Show Cause, but did not file an amended complaint. *See* Doc. 7, filed June 1, 2022.

The undersigned dismissed Plaintiff's claims against Defendant Navajo Technical University without prejudice for lack of jurisdiction because Plaintiff's response to Judge Yarbrough's Order to Show Cause did not show that the Court has jurisdiction over Plaintiff's claims against Defendant Navajo Technical University. *See* Doc. 10, filed October 11, 2022. The undersigned also dismissed Plaintiff's civil RICO claim against Defendant Babycos without prejudice for failure to state a claim upon which relief can be granted because Plaintiff did not address the civil RICO claim in his Objections to Judge Yarbrough's Order and did not file an amended complaint.

Because it had been approximately four months since Judge Yarbrough raised the issue of staying proceedings to allow for mediation and arbitration, the undersigned ordered Plaintiff to show cause why the Court should not dismiss Plaintiff's claims against Defendant Babycos due to the arbitration clause in Plaintiff's employment contract and to file an amended complaint. *See* Doc. 10, filed October 11, 2022 (notifying Plaintiff that failure to timely show cause and file an

amended complaint may result in dismissal of Plaintiff's remaining claims against Defendant Babycos). The Court dismisses Plaintiff's remaining claims against Defendant Babycos because Plaintiff did not show cause or file an amended complaint by the October 25, 2022, deadline. Having dismissed all of Plaintiff's claims, the Court dismisses this case.

IT IS ORDERED that this case is **DISMISSED without prejudice**.


SENIOR UNITED STATES DISTRICT JUDGE